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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Statement of the Public Utilities) PR Docket No. 94-109
Commission of Ohio's Intention to) (PR File No. 94-SP7)
Preserve Its Right for Future Rate)
and Market Entry Regulation of)
Commercial Mobile Radio Services)

To: The Commission

REPLY OF NEW PAR

New Par, by its attorneys, respectfully submits
its Reply to oppositions and comments filed in response
the "Statement of the Public Utilities Commission of
Ohio" ("PUCO Statement").¹

**THE OPPOSITIONS AND COMMENTS
FILED IN THIS DOCKET OVERWHELMINGLY SUPPORT
COMMISSION DENIAL OF THE PUCO STATEMENT**

Fourteen parties filed oppositions or comments
in response to the PUCO Statement. Thirteen of the
fourteen parties opposed the PUCO Statement largely on
the basis that the PUCO utterly failed to meet its statu-

¹ New Par, through partnerships or subsidiaries, is
the nonwireline cellular service provider in 16 MSAs and
RSAs in Ohio and therefore has standing as an interested
party in this proceeding. On September 19, 1994, New Par
filed its opposition to the PUCO Statement.

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tory burden.² The Act requires that States demonstrate in their petitions that continued regulation is necessary because market conditions fail to protect subscribers.³ Further, as the Commission clearly stated in its July 8, 1994 Public Notice announcing procedures governing state petitions that, "States bear the burden of proof" that continued regulation is required and "must identify and describe in detail the rules the state proposes to establish if the petition is granted."⁴ Thus, because the PUCO Statement failed to meet this burden, the parties overwhelmingly requested that the Commission deny the PUCO Statement.

In addition, several parties, including New Par, requested that the Commission specifically confirm that the PUCO's power to regulate CMRS rates through

² See Comments of Sprint Cellular Company at 2, 5-5; Opposition of GTE Mobilnet Incorporated at 9-13; Opposition of McCaw Cellular Communications, Inc. at 7-12; Comments of Ameritech Mobile Communications, Inc. at 2-3; Opposition of CTIA at 5-10; Comments of Nextel at 10; Opposition of the Personal Communications Industry Association at 9-13; Comments of AMPTA at 6; Comments of Ray's Electronics, Inc. at 6-10; Comments of Mobile Telecommunication Technologies Corp. at 5-6; Comments of Paging Network, Inc. at 3-6. See generally Comments of E.F. Johnson Company (arguing that reclassified Part 90 CMRS providers should be exempt from rate regulation.).

³ 47 U.S.C. § 332(c)(3)(A)-(B).

⁴ FCC Public Notice, DA 94-764 at 3 (emphasis added).

review of inter-carrier contracts (including roaming agreements) and the PUCO's complaint (or other administrative) processes is also preempted.⁵

Only one party -- The National Cellular Resellers Association ("NCRA") -- filed comments ("NCRA Comments") in support of the PUCO Statement. The NCRA Comments, however, were generically written and filed in all eight state dockets. Thus, they fail to address the PUCO Statement's material defect -- no showing that continued rate regulation is necessary to protect consumers. In fact, the NCRA Comments concede that "States filing petitions must demonstrate" continued regulation is necessary as required by the Act.⁶ Therefore, the NCRA Comments actually support denial of the PUCO Statement for failure to meet the statutory burden.

CONCLUSION

For the foregoing reasons, New Par respectfully requests that the Commission deny the PUCO Statement on an expedited basis. Further, the Commission should specifically confirm that the PUCO has been preempted from

⁵ Comments of GTE Mobilnet Incorporated at 4-5, 14-16; Comments of Sprint Cellular Company at 7-8; Comments of Ray's Electronics, Inc. at 10-12; Opposition of McCaw Cellular, Inc. at 8-9.

⁶ NCRA Comments at 1 n.1 (emphasis added).

regulating CMRS rates through review of inter-carrier agreements (including roaming agreements) and its complaint process.

Respectfully submitted,

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Dated: October 4, 1994

CERTIFICATE OF SERVICE

I, Richard Hindman, hereby certify that on this 4th day of October, 1994, a copy of the foregoing Reply of New Par was mailed by first class U.S. Mail, postage prepaid, to the following:

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